



THE EMPLOYMENT TRIBUNALS

BETWEEN

Mr Niranjit Moorah Singh

Claimant

and

Mr Herbert Berger

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Region: London Central

ON: 7 July 2021

Before: Employment Judge Paul Stewart

MEMBERS: sitting alone

Appearances:

For Claimant: did not appear and was not represented

For Respondent:

JUDGMENT

The unanimous judgment of the Tribunal is that all claims are dismissed.

REASONS

1. The Respondent is a Michelin-starred chef who presently operates an events catering establishment at Innholders Hall in the City of London.
2. The Claimant claims to have started to work for the Respondent as “casual staff” in April 2010. On 1 October 2018, he became an assistant manager, a role he continued to perform until his employment ended on 30 September 2020.
3. ACAS was in receipt of his Early Conciliation application on 26 October 2020 and provided their certificate on 26 November 2020. The Claimant then presented his claim to the Employment Tribunal on 26 November 2020.
4. In his ET1, he ticked the box at section 8 which indicated he was claiming to have been discriminated against on the grounds of religion or belief. He set out the details of his claim at section 8.2. He wrote the following in one paragraph which I have broken up into numbered paragraphs the better to discuss his claim:

- 1) I started working as a casual staff for Herbert Berger April 2019; I was offered 12 pounds per hour; in October I was elected to work full time as an Assistant Manager with an annual salary of 30,000.00 per year.
 - 2) Every time Herbert sees me wearing my Sikh Bangle since April he asked me to remove it; he calls it a bracelet; he never ask me what is this in your hand that you were wearing ? My 20 years working and living in London ; No employer has asked me to remove my Sikh Bangle.
 - 3) During Furloughed March 2020 Herbert did not top up our pay because he says we are not travelling at the moment so he need not do so. But why did he not top up or pay us or bank holiday and holiday pay during Furloughed which is against the Furloughed law? Why do I have to ask him for my Holiday pay to be paid.?
 - 4) Herbert has been present with a 10,000.00 pounds contribution from the Members of the Innholders Company which raised this money for him to look all of the staff. He was also given or received 50,000.00 by the Government ; this is what he said in his email.
 - 5) My Claim is now based on my Religion Discrimination on the usage off my Sikh Bangle at work; this Bangle was given to me by my late grandfather who was still alive in Malaysia; I brought this with me in memory of him and I have used this Sikh Bangle in my hand for more than 35 years now .
 - 6) No Employer has ever asked me in my life to remove this Bangle during work.
 - 7) Herbert says that the Bangle will get stuck in his ladle while saucing the food. Can we please ask him to demonstrate and run a show while we are there at Innholders Hall if he is right?
 - 8) Herbert has made the General Manager Redundant despite having financial support and I have to ask the General Manager about accrued holiday pay that I am entitled too.
 - 9) Asking someone to remove their religious signs from their body is against the law: can be a cross of Jesus or a hijab.
 - 10) I have gone through a very hard time since being Furloughed and lost my full income; not only thinking about how I can look after my family back home but being going through a depression period of losing everything in my life especially thinking about my Sikh Bangle.
 - 11) I was afraid to approach Herbert during work and the length I was employed and ask him why I am not allowed to wear this Sikh Bangle.
 - 12) Also my question is why Herbert was working for his wife during Furloughed when he is a Company Director ?
 - 13) Herbert doesn't pay any Rent to the Building that he runs his busin.
5. The Claimant continued his narrative in section 9 where he ticked three boxes, two of which showed him to be claiming the remedies of compensation and a recommendation in respect of his discrimination claim. The third was clearly ticked in error because it only was in reference to a claim for unfair dismissal which, of course, the Claimant had not only not claimed but lacked the service entitling him to claim.

6. The Claimant indicated on his ET1 that he was going to be represented by one Sylvain Logie. On the morning of the hearing, I asked my clerk to inform the parties' representatives that the hearing would begin at 12.30 p.m. rather than the 11 a.m. start that had been scheduled. The Respondent's solicitor sought dial-in details to be able to pass on to the barrister he had instructed and obtained, in response, a request for the telephone numbers which could be used for me to dial out for a conference call. The Respondent's solicitor provided three telephone numbers, one of which was for Mr Joshua Hitchens of Counsel. A fourth telephone number was added to that list by the Respondent's solicitor, that of the Respondent himself. The Claimant's representative, included in this email correspondence, made no contribution to it. When, towards 1 p.m., my other hearing permitted me to phone the representatives, I got no response from the Claimant's representative and a phone call to the Claimant merely obtained his voicemail.
7. At 1314 hours, Counsel for the Respondent sent through to me a copy of the skeleton argument that he wished me to read. I note now, but failed to note then, that his communication was not copied either to the Claimant or to his representative, both of whose email addresses the Claimant had included in his ET1.
8. The skeleton argument was served in support of the Respondent's application to strike out the Claim pursuant to Rules 37(1)(a) and (c) of the Tribunal Rules.
9. Counsel talked me through his skeleton argument and persuaded me that the claim as presented on the ET1 justified the striking out of the claim pursuant to Rules 37(1)(a). He also put up an argument for striking out the claim on the basis that there had been non-compliance with the rules of the Tribunal. He also argued that the claim was out of time. The last date of any discriminatory act complained of must have been before the Claimant was furloughed which the Claimant, in sub-paragraph 2 of section 8.2 of his ET1, says started in March 2020 and the ET3 says was on 13 March 2020. Given that the ET1 was not presented until 26 November 2020 and ACAS was only engaged in Early Conciliation for a month, the Claimant is over 3 months out of time. His ET1 does not attempt to advance any reason as to why it might be just and equitable that the claim should proceed notwithstanding it being out of time. However, I struck out the claim pursuant only to Rule 37(1)(a).
10. The discussion I had with Counsel proceeded on the basis that the Claimant had been properly served with notice of the Preliminary Hearing and with notice that the Respondent was pursuing its application to strike out the ET1.
11. It has taken me some time to get around to writing up the decision during which time the Respondent's solicitor has been chasing the Tribunal for the order and also there has been communication from the Claimant.
12. On 29 July 2021, the Claimant emailed the Tribunal with this message (not copied to the Respondent):

Good Evening and To Whom It May Concern ,

Hope you are well and great . I have not heard back from you since my case was lodge with ACAS. On the 7th July 2021 ; an African man by the name of Paul Stewart called me but I was at work at that time and was not able to pick up calls .I wasn't told in advance to expect a phone call from the Tribunal Office on this day.

He left a voice message asking me to email him at employmentjudge.paulstewart@ejudiciary.net

Since then, I haven't heard from him or anyone from the Tribunal Office . I want to know what is going on with my case progress so far ? Was there a telephone hearing done with my Witness ? Did my Employer Herbert Berger respond to this hearing? Can all documents send to me directly by post or email? .

Thanking you Sir/ Madam, and looking forward to someone contacting me as soon as possible .

Warm Regards,

Niranjit Moorah Singh

13. And then, on 13 August 2021, he emailed me directly (again not copying his message to the Respondent) with this:

Good Morning Paul Stewart,

Hope you are well and great . I missed your phone call today Wednesday 7th of July 2021 . I was at work so I was not able to pick up calls during service . Please let me know when is the best time for me to call you back Paul; leaving your office number or you can call me back Thursday before 3pm or Friday before 3pm .I do apologize as I am strict in picking up calls during work time .

Thank you, Paul and looking forward to hearing from you again .

Warm Regards,

Niranjit Moorah Singh

14. It appears to me from both of these messages that the Claimant did not know of the Preliminary Hearing that was fixed for 7 July. Further, if he did not know of that hearing, he could not have known that there was an application pending from the Respondent to strike out his claim. Rule 37(2) states:

A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

15. In these circumstances, I have decided to avail myself of the power given in Rule 70 to the Tribunal on its own initiative to reconsider any judgment where it is necessary in the interests of justice to do so.

16. Rule 73 states:

Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

17. Accordingly, I propose that my decision that the claim should be struck out should be reconsidered at a hearing on 2 December 2021 at 2 p.m. to be conducted by telephone. Should Counsel who appeared at the hearing on 7 July 2021 be unable to appear because of a prior commitment, I will consider an application to change the date provided such application is made within 7 days of the notice of this Judgment and is accompanied by a list of dates between 2 December 2021 and the end of January 2021 on which Counsel is not available.

1 September 2021

Employment Judge Paul Stewart

DECISION SENT TO THE PARTIES ON

06/09/2021.

AND ENTERED IN THE REGISTER

FOR SECRETARY OF THE TRIBUNALS